IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 285 OF 2004

Shri Avinash V. Sonawane, son of
late Mr. Vasant A. Sonawane, of
major age, married, residing at
Dona Paula, Ilhas, Goa. ..... Petitioner.

V/s.

1) Communidade of Serula,
through the Attorney, (Procurador)
Shri Mario Vaz, resident of
Porvorim, Bardez, Goa.

2) Administrator of Communidade of
Bardez, near Civil Court,
Mapusa, Bardez, Goa.

3) Government of Goa, through
its Chief Secretary, having Office
at Secretariat, Panaji, Goa.

4) Shri Rajendra S. Parab,
resident of Ramnagar, Betim,
Bardez, Goa. ..... Respondents.

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. P.A. Kamat, Advocate for respondents No.1 and 2.

Mr. Guru Shirodkar, Addl. Govt. Advocate for respondents No.3.

CORAM : B.H. MARLAPALLE, J.

DATE : 21ST OCTOBER, 2004.

ORAL ORDER :

Heard Mr. Sonak, the learned Advocate for the petitioner, Mr. P.A. Kamat, the learned Advocate for respondents No.1 and 2 and Mr. Guru Shirodkar, the learned Addl. Government Advocate for respondent No.3.

2. The petitioner had moved Regular Civil Suit No. 195/1997 for declaration and for allotment of the suit plot for residential purposes. This plot bearing No.9 ademasures 400 sq. metres from Survey No.102 of Village Penha de Franca. It was contended before the trial Court that by giving go by to the petitioner's claim, some other person, namely original defendant No.4 was allotted the same plot. The trial Court, after hearing all the parties and on appreciation of evidence, allowed the suit by its Judgment and Order dated 30.4.2002. The application submitted by the plaintiff was directed to be restored and with a further declaration that the plaintiff is entitled to the allotment of the plot without any auction. The allotment letter was held to be illegal and, therefore, directed to be set aside.

3. The petitioner, therefore, complains that on the basis of these circumstances, it was necessary for the Communidade to restore the application and forward it to the State Government who, in turn, would consider to decide the same in terms of the law laid down by this Court. It appears that this is not being done because of certain ambiguities purportedly noted in our earlier orders. The petitioner, therefore, had filed Civil Misc. Application No.376/2003 in

Regular Civil Suit No.195/1997 and the learned Civil Judge, Sr. Division, at Mapusa was pleased to reject the said application with costs. Hence, this petition.

4. There is no dispute on restoration of the petitioner's application for allotment of a plot for residential purposes, the said application will have to be processed under Article 334-A of the Code of Comunidades. Mr. Kamat, the learned Advocate appearing for respondents No. 1 and 2 submitted that the petitioner has not yet applied for the pending application to be processed. This allegation is disputed.

5. However, the fact remains that the petitioner had submitted an application which was to be restored and in terms of Article 334-A of the Code of Comunidades, the said application is required to be considered, if the petitioner is found to be eligible under any of the sub-clauses of Article 334-A. Mr. Sonak, therefore, fairly stated that the petitioner must submit the proof of his status for being eligible under Article 334-A of the Code of Comunidades, and he would submit an application along with necessary proof, requesting the respondent No.1 and 2 to process the restored application. If the Government is satisfied, after hearing the petitioner, it shall pass further orders of allotment, if the petitioner is found to be eligible.

6. The petitioner is, therefore, directed to approach

respondents No.1 and 2 to submit an application and further to prove his status for being eligible for such allotment under Section 334-A. If the petitioner applies by giving the material particulars, within two weeks from today, respondents No.1 and 2 shall process the same and forward it to the concerned Collector who, in turn, will process it further and place before the Competent Authority. This shall be done within three months from the receipt of the application from the present petitioner. In the meanwhile, the State Government shall not allot the suit plot to any one else.

7. This petition is, hereby, disposed of in terms of the above directions. The costs awarded by the Court below to be remitted to the Legal Services Authority.

B.H. MARLAPALLE, J.

ssm.